

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
DISTRICT OF PUERTO RICO

IN THE MATTER OF:	:	
:	:	
VCS NATIONAL PACKING COMPANY, INC.	:	Case No. B-93-12076
	:	(S.D. California)
	:	
Debtor	:	Chapter 11
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CONGRESO DE UNIONES	:	
INDUSTRIALES DE PUERTO RICO	:	
	:	
Plaintiff	:	
	:	
v.	:	Adv. No. 94-0002
	:	
VCS NATIONAL PACKING COMPANY, INC.	:	
	:	
Defendant	:	
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JOHNNY SANTANA-SANTOS, ET AL	:	
	:	
Plaintiffs	:	
	:	
v.	:	Adv. No. 94-0003
	:	
VCS NATIONAL PACKING COMPANY, INC.	:	
	:	
Defendant	:	
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HERMINIA RIVERA-GARCIA, ET AL	:	
	:	
Plaintiffs	:	
	:	
v.	:	Adv. No. 94-10003
	:	
VCS NATIONAL PACKING COMPANY, INC.	:	
	:	
Defendant	:	

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**DECISION AND ORDER**

**BACKGROUND**

The above captioned adversary proceedings were previously before this court on motions to remand. The plaintiffs in all three proceedings filed suit against VCS National Packing Company, Inc. ("VCS") in the Superior Court of Puerto Rico, Ponce Part, alleging that they were dismissed from their employment without just cause. VCS thereafter filed bankruptcy in the Southern District of California and sought to remove the action brought by Herminia Rivera-Garcia, et al, to the United States District Court for the District of Puerto Rico based on the alleged diversity of the parties. VCS removed the action brought by Congreso De Uniones Industriales de Puerto Rico and the action brought by Johnny Santana-Santos, et al, to the United States Bankruptcy Court for the District of Puerto Rico as causes of action related to the bankruptcy. VCS then sought to have the District Court withdraw reference of the two adversaries filed with the Bankruptcy Court and to consolidate all three actions in the District Court.

On June 6, 1994, the Honorable Carmen Consuelo Cerezo, Chief United States District Judge, issued an opinion finding that diversity did not exist between VCS and the plaintiffs in the Rivera-Garcia case. The Court also found that the action involved a purely state law claim, that there was no independent basis for federal jurisdiction and that the case was related to the bankruptcy but not a core proceeding. Accordingly, the Court remanded the action to the Superior Court of Puerto Rico, Ponce Part. The Court also denied the motion filed by VCS to withdraw reference of the two actions pending before the Bankruptcy Court.

After the District Court remanded the Rivera-Garcia case to the Superior Court, VCS removed it to the Bankruptcy Court for the District of Puerto Rico. Thus, at that time, all three cases were before this Court. Motions were filed by the plaintiffs in all three cases requesting that this Court remand the cases to the Superior Court of Puerto Rico, Ponce Part (Dkt.# 11 in Adv. No. 94-0002, Dkt.# 9 in Adv. No. 94-0003, Dkt.# 2 in Adv. No. 94-10003). VCS opposed the motions for remand arguing that the claims in all three actions were all claims arising under Title 11 and that this court had original jurisdiction under 28 U.S.C. § 1334(b).

On January 13, 1995, this Court entered a Decision and Order abstaining from hearing the cases pursuant to 11 U.S.C. § 1334(c)(2) and remanding them to the Superior Court of Puerto Rico, Ponce Part. Judgment was entered on February 16, 1995 remanding the adversary proceedings.

On March 31, 1995, attorneys for the plaintiffs filed a motion requesting \$14,625.00 in attorney's fees (dkt. #18). Plaintiffs argue that the adversaries were remanded pursuant to 28 U.S.C. § 1447(c). This section allows a Court to impose just costs and actual expenses, including attorney's fees, incurred as a result of the removal of an action. Plaintiffs also argue that Rule 332, of the Local Rules for the United States District Court for the District of Puerto Rico, requires that a motion under 28 U.S.C. § 1447(c) must be brought within forty-five days following the entry of judgment and that they have complied with this requirement.

On April 17, 1995, VCS filed a motion in opposition to the motion requesting attorney's fees (dkt. #19). VCS argues that 28 U.S.C. § 1447 only provides for attorney's fees for removals brought under 28 U.S.C. § 1446(a) and the removal in this case was pursuant to 28 U.S.C. § 1452. VCS also argues that Local District Court Rule 332 is not applicable to bankruptcy cases.

Accordingly, VCS argues that the plaintiffs were required to bring any request for attorney's fees within ten days of entry of judgment pursuant to Federal Rule of Bankruptcy procedure 9023.

The plaintiffs' motion requesting attorney's fees and the opposition by VCS came before the Court for hearing on July 14, 1995. The parties were given until July 28 to file supplementary materials. Both sides submitted post-hearing memorandums.

### DISCUSSION

The United States Code specifies the procedure for removal of an action from State court to a United States district court at 11 U.S.C. § 1446. With respect to remand of actions removed pursuant to 11 U.S.C. § 1446, the Code provides that:

[a] motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. . . .

11 U.S.C. § 1447(c). Rule 332 of the Local District Court Rules provides that "[a] motion requesting attorney's fees must be filed within forty-five (45) days following entry of judgment . . . ." Local Bankruptcy Rule 7001(a) makes Local District Court Rule 332 applicable to adversary proceedings before the bankruptcy court. Accordingly, as the plaintiffs' motion requesting attorney's fees was filed within forty-five days of the judgment, their request was timely.

In this case, the Court finds that the initial removal by VCS of the Rivera-Garcia case to the United States District Court for the District of Puerto Rico based on the alleged diversity of the parties was a removal pursuant to 11 U.S.C. § 1446. The case was remanded pursuant to 11 U.S.C. § 1447 after a finding that diversity jurisdiction did not exist.

VCS also removed the action brought by Congreso De Uniones Industriales de Puerto Rico and the action brought by Johnny Santana-Santos, et al, to the United States Bankruptcy Court for the District of Puerto Rico. After the District Court's remand of the Rivera-Garcia case, VCS then removed this action to the United States Bankruptcy Court for the District of Puerto Rico.

The Court finds that the removal by VCS of the three actions to the bankruptcy court was pursuant to 11 U.S.C. § 1452, which allows for removal of claims related to bankruptcy cases to the district court where a civil action is pending if the court has jurisdiction over the claim under 11 U.S.C. § 1334. Section 1334 relates exclusively to bankruptcy cases and proceedings. This section provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). Section 1334 further provides that:

[u]pon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United State absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. . . .

11 U.S.C. § 1334(c)(2). This Court abstained from hearing these cases pursuant to this section.

This Court found that:

the issues raised in all three cases involve only state law claims and are related to the bankruptcy case but not core proceedings. As there is no federal question presented, nor is diversity present, this action could not have been commenced in a court of the United States absent the defendant's petition in bankruptcy. The actions were commenced and can be timely adjudicated in the Superior Court of Puerto Rico, Ponce Part. Timely motions have been filed by the plaintiffs in all three actions requesting that this court remand the cases to the Superior Court of Puerto Rico, Ponce Part. Under these circumstances, abstention is mandatory.

Accordingly, this Court ordered the cases remanded to the Superior Court of Puerto Rico, Ponce Part. Section 1334(c)(2) does not mention remand. Only section 1452, relating to removal of claims related to bankruptcy cases, specifically provides for remand of these types of claims or causes of action. Section 1452 does not provide for the imposition of attorney's fees. The Court finds that 11 U.S.C. § 1447, which allows a court to require the payment of costs incurred as a result of the removal of an action does not apply to the remand of claims or causes of action under 11 U.S.C. § 1452. As the plaintiffs have presented no other statute, rule or grounds for the imposition of attorney's fees, their request for attorney's fees will be denied.

ORDER

Wherefore IT IS ORDERED that the plaintiffs' motion requesting \$14,625.00 in attorney's fees (dkt. #18) is DENIED.

SO ORDERED.

Dated at San Juan, Puerto Rico this \_\_\_\_ day of September, 1995.

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Gerardo A. Carlo  
United States Bankruptcy Judge